IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.932 OF 2006

Anand Dadu Chavan .. Appellant.
Vs.
Bhagwan Dadu Chavan .. Respondent.

Mr.N.J.Patil for the appellant.
Mr.G.M.Savagare for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 5TH DECEMBER, 2006

P.C.:

. Heard learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 9.6.2006 rendered by the appeal court, partly allowing the appeal filed by the respondent-plaintiff, against the judgment and order dated 30.1.2004 by which the suit of the respondent was dismissed by the trial Court. The suit was for partition of the suit plot bearing No.230-B situate at Hupari and for perpetual injunction restraining the appellant-defendant from making construction upon the said plot and changing its identity. The case set up by the plaintiff was that there was partition in 1983 between him and the defendant of all the joint family properties except plot no.230-B. This plot was kept

common since the residential house was constructed on the same and both were residing therein. As against this the case set up by the defendant was that the suit plot was kept away from the partition effected in 1983, since it was his self acquired property. Admittedly, the source of income of the defendant was hair dressing saloon situate at Hupari and the another plot no.230-A. Admittedly, the said saloon and plot no.230-A were also partitioned in 1983 which clearly indicates that those properties were joint family properties. Mr.Patil, learned counsel for the appellant, however, submitted that though the saloon and plot no.230-A were partitioned they were also self acquired properties of the defendant. In my opinion, in view of the admitted factual matrix, it is not open for the appellant to so contend. Moreover, the partition deed of 1983 is silent and does not support the defendant at all. Both the courts below after considering the entire material and the evidence on record have rightly held that plot no.230-B was also joint and it was purchased out of the joint family funds and that the defendant has failed to prove that it was his self acquired property. In my opinion, the contentions advanced by Mr.Patil that plot no.230-B was defendant's self acquired property deserves to be rejected. I do not find any perversity in the findings recorded by the courts below. No substantial

question of law is involved in the instant second appeal. Considering the findings of fact recorded by the courts below and as I find that there is sufficient material to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the finding of fact this second appeal does not warrant interference and is dismissed as such.

(D.B.Bhosale, J.)